No. 84-406
84-418

Office Supreme Court, U.S.
FILED
OCT 12 1984
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

October Term, 1984

NATIONAL FOOTBALL LEAGUE, et al.,
Petitioner,
v.
OAKLAND RAIDERS, LTD., & LOS ANGELES MEMORIAL COLISEUM COMMISSION,
Respondents.

OAKLAND-ALAMEDA COUNTY COLISEUM COMMISSION, INC.
Petitioner,
v.
OAKLAND RAIDERS, LTD., & LOS ANGELES MEMORIAL COLISEUM COMMISSION,
Respondents.

On Appeal From The United States Court Of Appeals, For The Ninth Circuit

BRIEF OF PUBLIC ENTITIES AS AMICI CURIAE IN SUPPORT OF GRANTING WRIT OF CERTIORARI

Filed On Behalf of City of San Diego, California; the City of Atlanta and Fulton County Recreation Authority, a public corporation of the State of Georgia; the City of Buffalo, New York; the County of Erie, New York; the County of Alameda, California; the City of Oakland, California; the City of Irving, Texas; the City of New Orleans, Louisiana; the City of Pittsburgh, Pennsylvania; Ramsey County, Minnesota; Tampa Sports Authority, a body corporate and politic of the State of Florida; the City of Green Bay, a Wisconsin municipal corporation; King County, Washington.

John W. Witt, City Attorney
Counsel of Record
202 "C" Street
San Diego, California 92101
(619) 236-6220

(*List of counsel continued on inside cover*)

INTERIM PRINTING & MAILING COMPANY
1105 WEST MORENA BOULEVARD, SAN DIEGO, CALIFORNIA 92110 — 275-3050

Robert R. Richardson

Counsel for the City of Atlanta and Fulton County Recreation Authority

James J. McLoughlin

Acting Corporation Counsel for The City of Buffalo

Eugene F. Pigott, Jr.

Erie County Attorney

Richard E. Winnie

City Attorney for The City of Oakland

Richard J. Moore

County Counsel for The County of Alameda

Donald Jackson Rorschach

City Attorney for The City of Irving

Salvador Anzelmo

City Attorney for The City of New Orleans

Marvin A. Fein

First Assistant City Solicitor for The City of Pittsburgh

Tom Foley

Ramsey County Attorney

Thomas C. MacDonald, Jr.

Counsel for Tampa Sports Authority

James A. Simmonds

City Attorney for The City of Green Bay

Norm Maleng

King County Prosecutor

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF AMICI CURIAE	1
SUMMARY OF ARGUMENT	3
ARGUMENT	
I. THE APPLICATION OF SECTION 1 OF THE SHERMAN ACT TO THE NFL'S LOCATION RULE PRESENTS IMPORTANT QUESTIONS FOR THIS COURT'S REVIEW	3
II. THE RELEVANCE OF PUBLIC INTEREST FACTORS TO A RULE OF REASON ANALYSIS OF THE LEGALITY OF PROFESSIONAL SPORTS LEAGUE LOCATION AGREEMENTS MERITS REVIEW BY THIS COURT	7
CONCLUSION	10

TABLE OF AUTHORITIES

Page

CASES

Boddiker v. Arizona State Dental Ass'n,
549 F.2d 626 (1977) 7

City of Oakland v. Oakland Raiders,
32 Cal.3d 60 (1982) 8,9

Copperweld Corp. v. Independence Tube Corp.,
____ U.S. ____ (1984) 4,5

Goldfarb v. Virginia State Bar,
421 U.S. 773 (1975) 7,9

Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc.,
340 U.S. 211 (1951) 4

Lifteau v. Metropolitan Sports Facilities Comm'n,
270 N.W.2d 749 (1979) 6

Los Angeles Memorial, etc. v. Nat. Football League,
519 F.Supp. 581 (1981) 4

Los Angeles Memorial Coliseum Com'n v. N.F.L.,
726 F.2d 1381 (1984) 4,5

Los Angeles Mem. Coliseum Com'n v. City of Oakland,
717 F.2d 470 (1983) 9

Martin v. Philadelphia,
420 Pa. 14 (1966) 8

Minnesota Vikings Football Club v. Metropolitan Council,
289 N.W.2d 426 (1979) 6

National Football League v. North American Soccer League,
459 U.S. 1074 (1982) 7

National Society of Professional Engineers v. United States,
435 U.S. 679 (1978) 7

TABLE OF AUTHORITIES (Continued)

Page

CASES (Continued)

New Jersey Sports & Exposition Authority v. McCrane, 61 N.J. 1 (1971) 8

Perma Life Mufflers, Inc. v. International Parts Corp., 392 U.S. 134 (1968) 4

San Francisco Seals, Ltd. v. National Hockey League, 379 F.Supp. 966 (1974) 5

Timken Roller Bearing Co. v. United States, 341 U.S. 593 (1951) 4

United States v. Yellow Cab Co., 332 U.S. 218 (1947) 4

OTHER AUTHORITIES

Areeda, *Intraenterprise Conspiracy in Decline*, 97 Harvard Law Rev. 451 (1983) 5

USA Today, April ____, 1984 at ____ 8

Weistart & Lowell, *The Law of Sports*, § 5.11 at 701 6,9

INTEREST OF AMICI CURIAE

Amici represent municipal governments, county governments, public entities and public corporations that own or subsidize sports stadiums which provide public facilities for NFL member clubs and other professional and local sports teams. Pursuant to Rule 36(4), the consent of the parties is not required to file this Brief, since *Amici* are political subdivisions of their states.

The factual history of this litigation may be found in ample detail in Petitioners' briefs and therefore will not be repeated here.

Amici wish to assist the Court in identifying and understanding the relationship between professional sports leagues and the communities in which their teams operate and how that relationship should affect the resolution of the antitrust issues raised in this action.

The antitrust issues presented to this Court are of enormous importance both in an economic and noneconomic sense to public entities and taxpayers across the United States. These issues directly affect the manner in which public authorities may deal with professional sports leagues, the degree to which public authorities may rely upon decisions and commitments of such leagues, and the pertinence of public interest considerations in a Sherman Act analysis of league decisions on the location of existing league teams.

The undisputed reality is that public entities and their taxpayers support professional sports leagues by public subsidy. Huge sports facilities are built by the public with borrowed money to be repaid in part by revenues generated from the continued operations of the sports leagues in the community.

The City of Oakland put itself on the map by its then thought farsighted investment in the business of professional football and by the subsequently unequalled fan support. Obviously, the City of Oakland, along with *Amici*, in making their investment decisions relied and still rely heavily on a sports league's ability to control the location of its teams. Community leaders would be subject to recall were they to promote public investment in barnstorming sports teams. From a business standpoint, the NFL would be foolish to ignore the public's contribution to its success by allowing willy-nilly relocations.

League rules that promote and ensure franchise location stability are critical to the public's decision to make these major investments. Such investment would seldom, if ever, be made in the absence of league rules and commitments that provide a reasonable assurance of continued team operations in a community.

Investment by public entities in community sports and entertainment facilities promotes competition among different sports, as well as among sports and other entertainment. The decisions of the courts below discourage future investment by public authorities in such facilities and put existing investments at serious risk.

In addition to these adverse financial consequences and their concomitant impairment to competition, the courts below failed to give due consideration to the equally important "investment" of community spirit and pride in local sports teams which lies at the heart of the league's commitment to the communities.

Antitrust laws never were intended to frustrate or undermine the public interest or consumer interests. Just the opposite was intended. Nevertheless, as applied and interpreted in the courts below, the antitrust laws have been turned against the public and the consumer in the City of Oakland and adjoining communities. *Amici* fear the same use of the Sherman Act against them.[1]

The courts below were misguided in focusing on the sports competition among the NFL teams that occurs on the football field while overlooking the economic competition among different sports and between sports and other entertainment. In so interpreting the antitrust laws, the courts will render meaningless the NFL's commitments to *Amici* and to other communities that support local teams. The decisions of the courts also will discourage public investment in sports facilities because of the inability to obtain adequate assurance of a continuing relationship between the sports franchises and the communities.

Amici urge the Court to recognize not only the existence of these competitive and public interest considerations, but their clear relevance to an

---

[1] Indeed, the City of Baltimore has already lost the Baltimore Colts and now is involved in protracted, expensive litigation over the legality of that unilateral move made in the wake of the court of appeals' decision in this case.

evaluation of sports league agreements concerning team location under Section 1 of the Sherman Act.

SUMMARY OF ARGUMENT

Amici urge that important questions of federal law are presented in this case and that a proper analysis of these questions will lead this court to conclude:

First, from its precedent, that the NFL's franchise location rule, which promotes competition and investment and protects the public interest, cannot as a matter of law violate Section 1 of the Sherman Act.

Second, assuming the application of Section 1 to such league rules, that public interest factors and the public service aspects of a business are entitled to consideration in a rule of reason analysis of professional sports leagues' location rules.

ARGUMENT

I

THE APPLICATION OF SECTION 1 OF THE SHERMAN ACT TO THE NFL'S LOCATION RULE PRESENTS IMPORTANT QUESTIONS FOR THIS COURT'S REVIEW

Amici, the City of Oakland, the County of Alameda and other communities relied on league control of franchise locations prior to making huge investments in public facilities. Those communities sought a *league* franchise to bring *league* sports to its citizens. The communities did not deal with the separate member clubs when bringing professional sports to town. The member clubs had no authority to do so -- that was a *league* decision.

The communities recognized the reality ignored by the Ninth Circuit in its misguided antitrust analysis. Professional sports leagues deal in one product -- league play. Only the league can produce that product and bring it to a community. As a matter of law, the league members cannot be treated as independent economic competitors under Section 1 of the

Sherman Act with respect to decisions on the location of league franchises.

In reaching the result below, the lower courts relied heavily on the so-called "intraenterprise conspiracy" cases, which were repudiated by this Court in *Copperweld Corp. v. Independence Tube Corp.*, 81 L.Ed.2d 628, 104 S.Ct. 2731 (June 19, 1984).[2] In applying the intraenterprise conspiracy doctrine to the NFL, the lower courts improperly elevated form over economic substance and distorted antitrust analysis in a manner that served neither consumer interests nor any other policy underlying the antitrust laws.[3]

The courts below gave unnecessary emphasis to the fact that the NFL clubs were "all independently owned." *Los Angeles Memorial Coliseum v. N.F.L., supra*, 726 F.2d at 1389-1390. As such, both lower courts viewed the NFL as merely an "association" of 28 "independent business entities" subject to the conspiracy provisions of Section 1 of the Sherman Act. *Id.* at 1388, 1390. In reaching this conclusion, the courts below relied upon decisions that no longer accurately state the law. In *Copperweld*, this Court undertook a detailed analysis of each of the intraenterprise conspiracy cases and disapproved their holdings and reasoning, stating that "[t]o the extent that prior decisions of this Court are to the contrary, they are disapproved and overruled." *Copperweld Corp. v. Independence Tube Corp., supra*, 81 L.Ed.2d at 647, 104 S.Ct. at 2745.

---

[2] In its initial holding, the district court relied upon all four principal intraenterprise conspiracy cases: *United States v. Yellow Cab Co.*, 332 U.S. 218, 91 L.Ed. 2010 (1947), *Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc.*, 340 U.S. 211, 95 L.Ed. 219 (1951), *Timken Roller Bearing Co. v. United States*, 341 U.S. 593, 95 L.Ed. 1199 (1951), and *Perma Life Mufflers, Inc. v. International Parts Corp.*, 392 U.S. 134, 20 L.Ed.2d 982 (1968). *Los Angeles Memorial, etc. v. Nat. Football League*, 519 F.Supp. 581, 582 (C.D. Cal. 1981), *aff'd* 726 F.2d 1381 (9th Cir. 1984). In affirming, the court of appeals both approved the district court's reliance on these cases and specifically cited *Timken* and *Perma Life*. *Los Angeles Memorial Coliseum Com'n v. N.F.L.*, 726 F.2d 1381, 1388 (9th Cir. 1984).

[3] Both lower courts also labored under the misapprehension that a holding that the NFL did not violate the antitrust laws in this case would necessarily "make the League incapable of violating Sherman Act § 1" and "immunize the NFL from § 1 scrutiny." *Los Angeles Memorial Coliseum v. N.F.L., supra*, 726 F.2d at 1387-1388. *Amici* do not believe either Petitioner to be urging such a position in this Court. Further, as Judge Williams aptly noted, sports leagues will remain subject to the full scope of the antitrust laws if the decisions of the lower courts are reversed. *Id.* at 1409 (dissenting opinion).

In *Copperweld*, this Court recognized that mere organizational structure alone is not sufficient to invoke Section 1 scrutiny, and that separate incorporation may be without antitrust significance and also serve numerous other valid goals. *Copperweld Corp. v. Independence Tube Corp., supra*, 81 L.Ed.2d at 643-647, 104 S.Ct. at 2740-2743. *See also*, Areeda, *Intraenterprise Conspiracy in Decline*, 97 Harv. L. Rev. 451 (1983). Antitrust courts are properly concerned with coordinated activity that "suddenly bring[s] together economic power that was previously pursuing divergent goals." *Copperweld Corp. v. Independence Tube Corp., supra*, 81 L.Ed.2d at 642, 104 S.Ct. at 2741. That is not the case here. In the context of a sports league, the coordinated activity "result[s] from an effort to compete [rather than] from an effort to stifle competition." *See, Copperweld Corp. v. Independence Tube Corp., supra*, 81 L.Ed.2d at 642, 104 S.Ct. at 2741. In a league context, the "coordination" is "necessary if a business enterprise is to compete effectively." *Id.*

Although the court of appeals found that the NFL clubs "are not true competitors" [*Los Angeles Memorial Coliseum v. N.F.L., supra*, 726 F.2d at 1391], that they share their revenues extensively [*id.* at 1390], that the NFL has both horizontal and vertical attributes [*id.* at 1391], that "the agreement creating the NFL is valid and the territorial divisions therein are ancillary to its main purpose" [*id.* at 1395] and that the location agreement furthers significant league interests [*id.* at 1396], the court nevertheless failed completely to appreciate the significance of those findings. Instead, it took shelter in the intraenterprise conspiracy cases, holding "that existing precedent [cannot] be ignored. . . ." *Id.* at 1390, n. 4. This reliance on a formalistic analysis of cases so recently disapproved by this Court should, without more, warrant review of the decision below.

In *Amici's* view, the proper treatment of a sports league location decision under Section 1 of the Sherman Act is found in *San Francisco Seals, Ltd. v. National Hockey League*, 379 F.Supp. 966 (C.D. Cal. 1974), which posed an equivalent antitrust issue. In that case, the NHL's Board of Governors refused to permit an NHL club to relocate from San Francisco to Vancouver -- an area where no other league team was operating. In holding as a matter of law that the NHL's conduct did not violate the Sherman Act, the court reasoned:

> "Within the relevant market in which we are here concerned, plaintiff and defendants are not competitors in the economic sense. It is of course true that the member

> teams compete among themselves athletically for championship honors, and they may even compete economically, to a greater or lesser degree, in some other market not relevant to our present inquiry. But, they are not competitors in the economic sense in [the market for the production of professional hockey]. They are, in fact, all members of a single unit competing as such with other similar professional leagues. *Consequently, the organizational scheme* of the National Hockey League, by which all its members are bound, *imposes no restraint upon trade or commerce in this relevant market, but rather makes possible a segment of commercial activity which could hardly exist without it.*" *Id.* at 969-70 (emphasis supplied).[4]

League undertakings in connection with stadium construction demonstrate how unrealistic it is to view members of a sports league as business competitors with respect to team location matters. One illustration is the commitment of the NFL not to approve any geographical relocation of a league member for the full 30-year term of a use agreement between that club and a public authority -- a commitment made to satisfy Minnesota state statutory prerequisites for the public construction of a new stadium. *See, Minnesota Vikings Football Club v. Metropolitan Council*, 289 N.W.2d 426, 444 (Minn. 1979). *See also, Lifteau v. Metropolitan Sports Facilities Comm'n*, 270 N.W.2d 749, ____ (Minn. 1979). True business competitors simply do not undertake commitments that directly benefit their competitors by facilitating the construction of the competitors' new operating facilities and assuring their long-term viability.

---

[4] A sports law textbook confirms the propriety of this analysis:

> "[T]he realities of the major sports leagues' operations would seem to lend support to the conclusion reached in San Francisco Seals. The primary goal of Section 1 of the Sherman Act is to insure that true economic competitors maintain a healthy distance from one another. The section was not intended to condemn all cooperative efforts in the business world. If a particular group of entrepreneurs are joint investors in a common venture which could not be carried on by any one of them alone, the cooperation which results hardly seems improper. In these instances, it is propr that the 'agreements' in question are viewed as essentially internal marketing decisions." Weistart & Lowell, *The Law of Sports*, § 5.11 at 701 (footnote omitted).

Amici submit that a realistic assessment of the operations of professional sports leagues leads inevitably to the conclusion that a league is not a collection of ordinary business competitors of the same character as the members of a trade association. Teams in a professional sports league have no valid business interest in driving each other out of business or in maximizing their profits at each other's expense or at the expense of communities that have invested in facilities on their behalf. Rather, as Justice Rehnquist observed in speaking of the National Football League itself:

> "The NFL owners are joint venturers who produce a product, professional football, which competes with other sports and other forms of entertainment in the entertainment market. Although individual NFL teams compete with one another on the playing field, they rarely compete in the market place. . . . This arrangement . . . is largely a matter of necessity." *National Football League v. North American Soccer League*, 459 U.S. 1074, 1077, 74 L.Ed.2d 639 (1982) (Rehnquist, J., dissenting from denial of certiorari).

II

THE RELEVANCE OF PUBLIC INTEREST FACTORS TO A RULE OF REASON ANALYSIS OF THE LEGALITY OF PROFESSIONAL SPORTS LEAGUE LOCATION AGREEMENTS MERITS REVIEW BY THIS COURT

The decisions below declined to require a recognition that public interest factors and the public service aspects of certain businesses (*e.g.*, professional sports leagues and teams) have public service aspects that require special consideration under antitrust laws. The trial court refused to instruct the jury that it should weigh these public interest considerations when assessing the reasonableness of the location agreement under the antitrust laws. *See, Goldfarb v. Virginia State Bar*, 421 U.S. 773, 787, n. 17, 44 L.Ed.2d 572 (1975); *National Society of Professional Engineers v. United States*, 435 U.S. 679, 696, 55 L.Ed.2d 637 (1978); *Boddiker v. Arizona State Dental Ass'n*, 549 F.2d 626, 632 (9th Cir.) *cert. denied*, 434 U.S. 825 (1977).

The Court of Appeals' unfortunate interpretation of antitrust doctrine has produced merely one ripple in an ever-widening stream of litigation, which already has had unsettling effects on relations between public authorities and the professional sports industry. A national newspaper recently editorialized about these effects:

> "Cities, expecting to create millions in new income, give their names to teams. Fans give their hearts. Sadly, they sometimes get little in return. An Owner who doesn't get what he wants from a town now can take the franchise to another city, leaving behind an expensive, empty stadium and fans with broken hearts. . . .
>
> "If this business of musical franchises continues without interference from Congress or the courts, it can only damage the health of professional sports. Each time an Owner is able to thumb his nose at a league or at a city, the stability of the sports industry is threatened. And when loving fans, robbed of their team, stop hating, they will stop caring about the game. Then the game will be over." *USA Today*, April ____, 1984 at ____.

Public authorities, like the public generally, have long looked to professional sports leagues for the responsible administration of their business as the NFL, bringing its product to Oakland each Sunday, became part of the community fabric in the sense of economics, civic loyalty and togetherness.

Publicly owned facilities for the presentation of professional sports league games are commonplace throughout the United States. The construction, financing and operation of these publicly owned stadiums has long been viewed as a proper governmental function. *See, Martin v. Philadelphia*, 420 Pa. 14, 18-19, 215 A.2d 894, 896 (1966); *New Jersey Sports & Exposition Authority v. McCrane*, 61 N.J. 1, 15-16, 292 A.2d 545, 552 (N.J. 1971) *appeal dismissed*, 409 U.S. 843 (1972); *City of Oakland v. Oakland Raiders*, 32 Cal.3d 60, 70-71, 183 Cal.Rptr. 673, 646 P.2d 835 (1982).

That governmental interests are at the core of disputes of the present type is underscored by both the City of Oakland's eminent domain suit

against the Raiders[5] and the suit brought by the Los Angeles Coliseum, a Respondent in this action, against the City of Oakland to enjoin prosecution of that eminent domain suit on Clayton Act grounds.[6]

The decision of Petitioner NFL to maintain the Raiders' operations in Oakland was motivated by the belief that such a decision served league interests. But in making that decision, the NFL also served the interests of Oakland consumers and taxpayers by respecting the investments they had made on behalf of the NFL and the Raiders, the substantial contributions that the Raiders' franchise made to the social and economic well-being of the Oakland area, and the extraordinary fan and community support that the Raiders' franchise received during its two decades in Oakland.

Agreements that promote the public interest and further an entity's public service obligations should not be evaluated under the strict standards designed to ensure that true competitors maintain a "healthy distance from one another." (Weistart and Lowell, *The Law of Sports, supra*, at 701.) *See, Goldfarb v. Virginia State Bar, supra*, 421 U.S. at 787, n. 17.

Even if the courts below properly limited their consideration to the intraleague competitive effects of the NFL location rule, they ignored the fact that league policies favoring franchise stability have substantial procompetitive effects in their own right. By demonstrating a sports league's willingness to respect community investments made on a team's (and, therefore, on a league's) behalf, league rules governing franchise location promote competition by facilitating the construction of stadiums, arenas and other related facilities -- construction which is without question a procompetitive factor. Stadium construction facilitates the entry of sports teams into the marketplace by eliminating barriers to entry that exist when there are no facilities. Such construction thus enhances consumer welfare by permitting fans greater freedom of choice and by promoting competition between sports and other forms of entertainment. And, by improving the quality of playing facilities, stadium construction encourages expansion of sports leagues and makes league sports a more effective competitor in the larger market for entertainment products.

---

[5] *See, City of Oakland v. Oakland Raiders, supra*, 32 Cal.3d 60.

[6] *Los Angeles Mem. Coliseum Com'n. v. City of Oakland*, 717 F.2d 470 (9th Cir. 1983).

CONCLUSION

Amici urge the Court, in the public interest, to grant certiorari.

Respectfully submitted,

John W. Witt, City Attorney

Counsel of Record